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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General

The Secretary-General has the honour to submit to the members of the General Assembly the report on the situation of human rights in the Democratic People's Republic of Korea submitted by the Special Rapporteur of the Commission on Human Rights, Vitit Muntarbhorn, in accordance with Commission resolution 2005/11.

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Summary

In its resolution 2004/13, the Commission on Human Rights decided to appoint a Special Rapporteur to establish direct contact with the Government and the people of the Democratic People's Republic of Korea and to investigate and report on the human rights situation there. Vitit Muntarbhorn was appointed Special Rapporteur in July 2004. The mandate of the Special Rapporteur was extended for one year by resolution 2005/11 and the present report is submitted in accordance with that resolution.

The current situation can be summarized as follows. First, on the constructive side, the Democratic People's Republic of Korea is a party to four key human rights treaties — the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. It has already submitted various reports under those treaties to the relevant monitoring committees. Second, the Democratic People's Republic of Korea has cooperated with various United Nations agencies. In 2005, with the United Nations Children's Fund, it launched the first National Child Health Day which enabled some 2 million children to receive vitamin A supplements and other health services. Third, like many countries, the Democratic People's Republic of Korea already has some legal and operational infrastructure which can help to promote and protect human rights. Fourth, in recent years the country has undertaken some reforms, particularly in the legal field. In 2004 the Criminal Code was revised to reflect the international principle of *nullum crimen sine lege* (no crime without a law). Fifth, there have been improvements on some fronts, particularly the country's experimentation with liberalizing the economy, but the economic and social situation remains disconcerting.

Various critical challenges remain to be addressed: the right to food and the right to life; the right to security of the person, humane treatment, non-discrimination and access to justice; the right to freedom of movement, asylum, and protection of persons linked with displacement; the right to the highest attainable standard of health and the right to education; the right to self-determination/political participation, access to information, freedom of expression/belief/opinion, association and religion; and the rights of specific persons/groups, including women and children. These issues are explored in the present report. Summary reports are also provided of country missions to Japan and Mongolia to assess the impact of the human rights situation of the Democratic People's Republic of Korea on those countries.

In sum, while there have been some constructive developments in the country in recent decades, there have been various discrepancies and transgressions — several of an egregious nature — in the implementation of human rights in the country, calling for immediate action to prevent abuses and provide redress. Various recommendations are offered at the end of the report addressed to the Government on the one hand, and to other members of the international community, on the other hand.

The present report is based upon the first report of the Special Rapporteur to the Commission on Human Rights (E/CN.4/2005/34), in which he set out his initial observations on the situation of human rights in the Democratic People's Republic of Korea.

Contents

		Paragraphs	*Page*
I.	Introduction	1	4
II.	Method of work	2–3	4
III.	Situation of human rights in the Democratic People's Republic of Korea	4–42	5
	A. Constructive elements	4–8	5
	B. Specific challenges	9–42	6
IV.	Country visits	43–67	13
	A. Japan	43–52	13
	B. Mongolia	53–67	16
V.	Recommendations	68	20

I. Introduction

1. In resolution 2004/13, the Commission on Human Rights expressed deep concern over the human rights situation in the Democratic People's Republic of Korea and requested the Chairman of the Commission to appoint a Special Rapporteur to establish direct contact with the Government and the people of the country and to investigate and report on the situation and on the Government's compliance with its obligations under international human rights instruments. It requested the Special Rapporteur to "seek and receive credible and reliable information, including through visits to the country, from all relevant actors, including Governments, non-governmental organizations and any other parties who have knowledge of these matters". It also invited the Special Rapporteur to report to the General Assembly and the Commission. I was invited to take up the post of Special Rapporteur in 2004. I made an initial statement on the situation under the mandate to the General Assembly in 2004 and submitted my first full report to the Commission in 2005 (E/CN.4/2005/34). The mandate of the Special Rapporteur was extended for one year by resolution 2005/11. The present report is submitted in accordance with that resolution, and is based upon my initial observations on the situation of human rights in the Democratic People's Republic of Korea as set out in my report to the Commission.

II. Method of work

2. To date, while I have sought access into the Democratic People's Republic of Korea, I have not yet been invited into the country and the Government not cooperated with the mandate. I have thus based my report on information from a variety of sources — governmental, non-governmental and intergovernmental. I have held meetings with a variety of key representatives from the governmental, non-governmental and intergovernmental sectors. I also undertook missions to Japan and Mongolia at the beginning of 2005 to witness the impact of the human rights situation in the Democratic People's Republic of Korea on those countries, and summary reports of those missions are included in this study.

3. I wish to thank all Governments, intergovernmental organizations, non-governmental organizations, other entities, and staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their kind assistance, which is greatly appreciated. The message that I convey to all concerned is to urge the Democratic People's Republic of Korea to see this mandate as a window of opportunity to engage with the world, particularly with the United Nations, to improve the human rights situation in the country. The process adopted by this Special Rapporteur is based upon a constructive step-by-step approach working progressively to promote and protect human rights in the country in a fair, balanced and independent manner.

III. Situation of human rights in the Democratic People's Republic of Korea

A. Constructive elements

4. First, on the constructive side, the Democratic People's Republic of Korea is a party to four key human rights treaties — the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has already submitted various reports under these treaties and has engaged with the human rights bodies concerned, namely the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and most recently, the Committee on the Elimination of Discrimination against Women (CEDAW). In 2005 its report on women's rights (CEDAW/C/PRK/1) was considered by CEDAW at its thirty-third session, and the recommendations of the Committee (see CEDAW/C/PRK/CO/1) are borne in mind by this study.

5. Second, the Democratic People's Republic of Korea has cooperated with various United Nations agencies. In 2005 it launched with the United Nations Children's Fund (UNICEF), the first National Child Health Day, which enabled some 2 million children to receive vitamin A supplements and other health services. One human rights treaty body has been allowed into the country; in 2004 members of the Committee on the Rights of the Child were invited to visit the country.

6. Third, like many countries, the country already has some legal and operational infrastructure which can help to promote and protect human rights. For example, the most recent national Constitution, adopted in 1972 and amended in 1992 and 1998, and other national laws and policies provide some guarantees for human rights. However, there are key challenges concerning implementation.

7. Fourth, in recent years the country has undertaken some reforms, particularly in the legal field. In 2004 the Penal Code was revised to reflect the international principle of *nullum crimen sine lege* (no crime without a law). Article 6 of the Penal Code now reads: "The State shall charge criminal responsibilities only in cases of crimes under the Penal Code" (unofficial translation). This is an improvement from the past position, which conferred powers on the authorities to criminalize acts not covered by the Criminal Code by means of "analogous interpretation" of the law. The authorities have also published a compendium of laws for general distribution. Yet, there are still major gaps between principles and practices.

8. Fifth, before 1995, there were various safety nets to help the population, ranging from State-provided health care to extensive access to social security and education. These declined owing to the crisis of the mid-1990s — caused by a variety of factors, including the food crisis, natural disasters, reduction of support from other countries, and mismanagement at the national level. Since then, there have been improvements on some fronts, particularly the country's experimentation with liberalizing the economy, but the economic and social situation remains disconcerting, as described below.

B. Specific challenges

9. No assessment of the human rights situation in the Democratic People's Republic of Korea would be complete unless its interrelationship with international human rights standards, democracy, peace, human security, demilitarization/disarmament and sustainable development is also taken into account. The non-democratic nature of the power base in the Democratic People's Republic of Korea impedes the enjoyment of human rights substantially, while the State-centric focus of the national authorities aimed at ensuring survival of the regime at the top, under the umbrella of so-called "collective" rights and national sovereignty, hampers the realization of human rights and their interrelationship with the other factors mentioned. Moreover, the problem of (de-)nuclearization of the country poses a long-standing, intricate challenge for the Korean peninsula and the international community as a whole. The resumption of talks on the issue between the various key parties in 2005 should be welcomed; not only is that dialogue essential to resolving a sensitive issue with global implications, but positive developments in this regard would also help to create an atmosphere conducive to the promotion and protection of human rights in the country.

1. The right to food and the right to life

10. In the mid-1990s there were catastrophic food shortages brought about by floods and drought, compounded by power imbalances and inadequate response from the power structure. These factors have had a huge impact on the country's development and have endangered many lives and livelihoods. The issue of the right to food is also being dealt with by the Special Rapporteur on the right to food. I wish to support and complement the work of that mandate.

11. The general sentiment is that the situation in 2005 remains critical. There is a drastic shortfall of food produced in the country and possible humanitarian aid from outside. A recent operational assessment is as follows:

> "WFP operations in the DPRK continued to be hampered by funding shortfalls and as a result, 1.2 million pregnant/nursing women and kindergarten and nursery children stopped receiving beans in addition to oil in May. The situation remains critical and despite intensified fund-raising efforts, WFP has received only limited pledges since October 2004. Without a radical change of circumstances, WFP will be forced to cut cereal rations to 3.6 million elderly people, food-for-work participants and their families, primary school children and the poorest urban households in mid-June.
>
> "...
>
> "The Public Distribution System (PDS) ration remains unchanged at 250 grams per person per day composed of a mix of maize and rice. However, officials in many counties informed WFP staff that the ration is likely to be cut again in July, to 200 grams. That would be the lowest level since 2001."[1]

12. In 2004 the Democratic People's Republic of Korea indicated that it was no longer willing to continue with the Consolidated Appeal Process through which United Nations agencies had collaborated to raise support for aid to the country; the authorities preferred to move towards longer-term development aid with fewer

guarantees for monitoring. The adjusted approach was finalized in the Framework for International Cooperation in 2005.

13. In reality, United Nations aid operates on the basis of "no access, no food" — if there is no access to the target group needing the food aid, the food aid will not be handed out. There are continuing debates concerning how much of the food aid provided from abroad actually reaches the target population and to what extent it is diverted for other (clandestine) uses. One source interviewed by myself claimed that there are no major diversions for other uses. Other sources disagree with that viewpoint.

14. The monitoring process is now changing, with potentially more qualitative monitoring as follows:

> "As part of WFP's new monitoring system, the first periodic Household Food Security Assessment took place at the end of May/early June. For 10 days WFP monitoring teams conducted 240 family household interviews, 10 focus group discussions and 70 observational walks within the communities where household interviews were held. The focus group discussions were particularly successful and informative. Many issues otherwise considered as sensitive by the DPRK Government (e.g. informal economy, household expenditure and the deteriorating food security situation) were discussed. The intention is to conduct three such assessments each year, to reflect the changing food needs in specific periods of the agricultural cycle, and thus prioritise food interventions more accurately."[2]

15. In my opinion, what is needed is not reduction of monitoring of the implementation process, but rather more effective monitoring aimed at ensuring maximum transparency and accountability. Yet, while some checks to monitor the distribution of food aid are in place, random checks by foreign humanitarian organizations are still not permitted by the national authorities in the Democratic People's Republic of Korea.

16. On another front, while there is a need to advocate continuation of food aid, the distortions caused by the high military budget should not be overlooked: money from the military/defence sector would be much better spent on the social and economic sector — to lift the country from its food crisis and address the antiquated infrastructure and dire energy and other shortages accompanying that crisis. The following table illustrates the estimated military expenditure:

Estimated military expenditure in the Democratic People's Republic of Korea

Military expenditure in local currency: billion won

1988	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
3.9	4.3	(4.3)	(4.5)	(4.6)	(4.7)	(4.8)	..	..	..	(2.9)	(2.9)	(3)	(3.1)	(3.3)	(3.9)	4.2

Military expenditure in constant (2003): million United States $

1988	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
25.8	27.1	(28.8)	(29.8)	(30.6)	(31.3)	(32.1)	..	..	..	(19.5)	(19.5)	(20)	(20.9)	(22)	(26)	27.9

Source: Information from the Stockholm International Peace Research Institute, at http://www.sipri.org/contents/milap/milex/mex_database1.html.

17. To focus on the issue of food aid alone is incomplete; the authorities of the Democratic People's Republic of Korea are also under a responsibility to reduce military/defence expenditure and ensure equitable re-allocation of resources to respond effectively to the food crisis and other areas needing development.

2. The right to security of the person, humane treatment, non-discrimination and access to justice

18. There are many reports from a variety of sources concerning alleged transgressions in this field, often linked with laws and institutions, especially prisons and detention centres, that are below international standards, aggravated by poor law enforcement and malpractices, including preventive/administrative detention without access to credible courts.[3] There are also myriad publications concerning violence against the person, and several of these sources provided the backdrop for the adoption by the Commission on Human Rights of resolution 2005/11 creating this mandate. In that resolution the Commission expressed deep concern about continuing reports of:

> "(a) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, the absence of due process and the rule of law, imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour;
>
> "(b) Sanctions on citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, such as treating their departure as treason leading to punishments of internment, torture, inhuman or degrading treatment or the death penalty;
>
> "(c) All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association and on access of everyone to information, and limitations imposed on every person who wishes to move freely within the country and travel abroad;
>
> "(d) Continued violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions, including by labour-inducing injection or natural delivery, as well as infanticide of children of repatriated mothers, including in police detention centres and labour training camps."

19. A very disconcerting practice is documented by various sources — collective punishment based upon "guilt by association".[4] This means that if a person is punished for a political or ideological crime, members of his or her family are also punished. This has both horizontal and vertical impact — horizontal in that it leads to the persecution of immediate family members and vertical in that it may lead to the stigmatization of subsequent generations, given that the authorities keep records of families as part of the iron grip on the population.

20. On another front, while the Constitution and other laws advocate the principle of non-discrimination, the practice is defective. There are a number of reports that in the past, the population was divided into various groups ranging from those favoured by the authorities, to those seen as borderline or "wavering", and at the bottom of the ladder, those considered as enemies of the authorities. While this

practice may have been abolished in law, it seems to persist and is implied by the testimonies of those who leave the country in search of refuge elsewhere.

21. The Criminal Code was revised in 2004 with the addition of various negative elements, such as increased penalties for anti-State crimes. There are new categories of crimes such as crimes involving national defence management (chap. 4) and crimes against socialist culture (chap. 6). There are mandatory death sentences for "conspiracy to overturn the State", "terrorism", "treason against the fatherland", "treason against the people" and "premeditated murders".[5]

22. On another front, the revised Code reportedly reduces penalties for those leaving the country for non-political reasons, such as to seek economic opportunities in neighbouring countries. There is a new policy to enable them to return to the Democratic People's Republic of Korea with the promise of a pardon. Yet, the key challenge is implementation of the law, in particular the need to treat returnees humanely.

23. Several malpractices have also had an impact on nationals of other States. For instance, the authorities have already admitted to having abducted a number of Japanese nationals, and a summary of this issue is given below. According to information received, nationals of other States have also been abducted. The question is also being dealt with by another United Nations special procedure, the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur wishes to support and complement the work of that body.

24. Given the number of reports already received on transgressions in the Democratic People's Republic of Korea affecting the right to security of the person, humane treatment and non-discrimination, there are serious grounds for concern. There are also reports that there is no independent judiciary as part of access to justice for the population, thus indicating an absence of the rule of law. While the Special Rapporteur is not in a position to verify all these reports and allegations, initial impressions suggest that the mass of reports and related allegations cannot be seen as merely coincidental, as they seem to raise a pattern of malpractices calling for immediate redress and checks and balances against abuse of power.

3. The right to freedom of movement, asylum, and protection of persons linked with displacement

25. Generally, the authorities of the Democratic People's Republic of Korea impose strict controls over the movement of people, although these have been relaxed recently to a limited extent. To move from one area of the country to another, the prospective migrant needs to obtain a traveller's certificate from the authorities, a highly cumbersome procedure. To travel across national boundaries into other countries, the person needs to obtain an exit visa or the equivalent. There are punishments for failing to obey the national law on this front; in principle, some of the penalties were reduced by the law reform in 2004. These constraints are inconsistent with the right to freedom of movement guaranteed by human rights.

26. Nationals of the Democratic People's Republic of Korea have been on the move, crossing the border into other countries for at least two main reasons.[6] First, political constraints and persecution act as a push factor pressuring a number of persons to seek asylum in other countries. In the period 2002-2005 many nationals of the Democratic People's Republic of Korea seeking asylum in a number of ways

such as entering embassies and schools in other countries; this led to a clampdown, including arrests and refoulement. It has recently been reported that more people are leaving the country for the purpose of family reunion in other countries. In general, those leaving the country for political reasons fit into the traditional international law definition of "refugee", namely persons fleeing their country of origin for well-founded fear of persecution.

27. Second, the food crisis of the mid-1990s has forced many people to search for livelihoods elsewhere, at times crossing the border into other countries. As persons in this category may also be punished upon return to the Democratic People's Republic of Korea for having left without an exit visa, they may also be classified as "refugees *sur place*", namely those who did not leave the country of origin for fear of persecution, but who may fear persecution upon return to the country of origin.

28. The backbone principle behind the issue of asylum and refugee protection is non-refoulement, namely persons seeking asylum must not be pushed back to areas of danger. Currently, there are lapses in compliance with this principle in some countries that are receiving those seeking asylum from the Democratic People's Republic of Korea, and the principle needs to be complied with effectively by all countries.

29. On a related front, there is still a debate concerning whether those seeking asylum are "illegal immigrants" (often linked with economic migration/economic migrants) or refugees. The former implies that they can be sent back to their country of origin, while the latter are protected by the principle of non-refoulement. I would submit that a key test is to see whether they are protected by the country of origin. If they are not, this should open the door to international protection and legitimize their classification as refugees. Even if some countries are not ready to classify them openly as refugees, these persons should at least be treated as persons in need of international protection, and basic international law principles, such as non-refoulement, should be upheld for their protection.

30. There is also a need to ensure that those seeking asylum have access to the Office of the United Nations High Commissioner for Refugees (UNHCR) and to procedures to determine their status; if they fall into the category of refugees, they should be allowed to stay in the asylum country at least temporarily and should be treated humanely with due regard to the principle of non-refoulement. According to information received, recent trends indicate a disquieting picture: there is an increasing proportion of women among the new arrivals in many countries as discussed below.

31. On another front, the plight of countries receiving asylum-seekers should not be overlooked, especially where there are mass influxes. It is incumbent upon international solidarity and responsibility-sharing to help shoulder the load of those countries. If the first asylum country is not able or willing to grant refuge to the asylum-seekers, other countries should offer a helping hand through such modalities as offering resettlement places. This is already happening to some extent in regard to asylum-seekers from the Democratic People's Republic of Korea and it needs to be well supported. It is also worth reiterating that the grant of asylum in international law should not be regarded as an unfriendly act. Rather, source countries, such as the Democratic People's Republic of Korea should respect that process while helping to address the root causes that give rise to outflows of people and enabling the safe return without penalties of those who wish to do so.

4. The right to the highest attainable standard of health and the right to education

32. Before the mid-1990s, the economic and social situation was generally constructive, particularly with regard to access to social services such as health care and education. However, despite official sources claiming such developments as universal access to education and no unemployment, it has always been difficult to verify the real scope of the coverage. Moreover, there were/are always practical challenges, linked with the fact that access to services were/are easier for those favoured by the authorities, while those on the margins, such as the politically/economically/socially deprived and those in prison, suffer from a degree of exclusion owing to lack of or inadequate access to the social security system. Currently there is a critical shortage of medicines, while the breakdown of electricity and water supplies and poor sanitation take their toll among the medical and educational services.

33. While the economic and social situation has improved on some fronts, in qualitative terms, the situation in the country has always been ambivalent. Health services tend to be more accessible to those close to the authorities, while the educational system is heavily controlled by the State. There is a high degree of indoctrination whereby the children are trained from a young age to be subservient to the State and its ideology (*juche* and worship of the leader), in addition to pervasive instrumentalization of the young population by the authorities to legitimize and perpetuate the political modus vivendi. This is compounded by lack of access to a variety of sources of information and participatory methodology to nurture critical, analytical thinking so as to provide space for a plurality of choices and voices. I underline my support for the various United Nations procedures that deal with these issues and wish to complement their work.

5. The right to self-determination/political participation, access to information, freedom of expression/belief/opinion, association and religion

34. The right to political participation is an inherent component of the right to self-determination and should be based upon the will of the people rather than that of the national authorities claiming to personify the State. Yet, in the setting of the power polity in the Democratic People's Republic of Korea, it is the latter which prevails.

35. While it is claimed by the national authorities that there are rights in regard to access to information, expression/belief/opinion, association, and religion, the reality is often the contrary. This is exemplified by the fact that it is still illegal to listen to foreign radio without official permission. The very nature of the State impedes various freedoms such as expression/belief/opinion, since political dissidents are not tolerated and are punished severely. While a workers' union exists in the country, it is State controlled, and a multiparty political system does not exist — in effect, the State's monopolistic power base does not allow it. It is also impossible to set up and run genuine non-governmental organizations free from State interference.

36. In regard to freedom of religion, despite claims of liberalization by the national authorities, many sources indicate the contrary: there is repression not only of religious personnel but also those who seek to associate with them. According to information received, various worshippers and members of religious personnel are persecuted, at times to the extent of being abducted.

6. The rights of specific persons/groups: women and children

37. The Democratic People's Republic of Korea had witnessed various achievements concerning aspects of women's rights, particularly guarantees of gender equality in various laws, including the Constitution, before the food shortage crisis which began in 1995. There was/is broad participation of women in the workforce at the middle and lower levels. Yet, those achievements should not obscure various difficulties that have permeated the system since its inception. There is inherently a difference between de jure guarantees and de facto implementation. There were/are still prejudicial stereotypes — particularly the belief that the woman's place is in the home — which traditionally undermine women's rights. There is only limited access by women to key decision-making positions at the top, particularly in politics, the judiciary and the civil service.

38. There are other disconcerting developments. First, a large number of mothers have suffered from the food shortage since the mid-1990s and their nutritional status has not improved. In 2004 an extensive food and nutrition survey carried out by United Nations agencies in cooperation with the Democratic People's Republic of Korea revealed that while the situation of children had improved on some fronts in regard to malnutrition, the situation of women had not improved: some one third of mothers were found to be malnourished and anaemic, and that obviously affected the child's malnutrition. There was no improvement between the situation in the previous survey executed in 2002 and the most recent survey in 2004.[7]

39. Second, there is a major concern in regard to smugglers of human beings and traffickers exploiting women who seek asylum or livelihoods in other countries. Why do recent reports suggest that there is now a greater proportion of women than men who seek asylum in neighbouring countries — who are also smuggled and/or trafficked?[8] It seems that the smugglers and traffickers are currently targeting women directly; this can be seen in the report below on my visit to Mongolia where I interviewed women who had been prey to the phenomenon. Moreover, the smugglers and traffickers believe that women tend to fulfil their promise to pay their smugglers and traffickers better than men do. It is also reported that some neighbouring asylum countries are less likely to punish women than men for illegal entry.

40. Third, there is the issue of violence against women. This has a domestic feature in the form of violence at home and in the family. The other feature is institutional violence, particularly in prisons and other closed institutions, which are substandard. This affects in particular women who do not belong to the ruling elite and who are marginalized by the cloistered political system. CEDAW called on the Democratic People's Republic of Korea:

> "to conduct research on the incidence, causes and consequences of all forms of violence against women, including domestic violence, and to include the results in its next periodic report. In this regard the Committee urge[d] the State party to find ways to make visible the existence of domestic violence, for example by training health workers to identify signs of abuse. It also recommend[ed] that the State party adopt specific legislation on domestic violence and ensure that violence against women and girls constitute a criminal offence, that women and girls who are victims of violence have

access to immediate means of redress and protection and that perpetrators are prosecuted and punished ..." (CEDAW/C/PRK/CO/1, para. 38).

41. With regard to child development, the 2004 food and nutrition survey mentioned above indicates a decline in child malnutrition as compared with the findings of the 2002 survey, although the malnutrition rates are still high. Stunting is reported in 37 per cent, underweight 23 per cent and wasting 7 per cent of the children covered by the survey, with a significant improvement among the 1-3 year age group.[9]

42. Behind this, there has always been a sense of ambivalence: the implementation of child rights has to be seen from the angle of those who do not fit into the power base. The children of those who diverge from or who are ostracized by the ruling elite are discriminated against in their access to services. The appalling conditions of the prison system and various institutions obviously have a negative impact on children who are institutionalized or who have to confront the juvenile justice system. The food shortage has also pushed many children out onto to the streets. The current critical situation has also led to fears of more displacements and influxes into neighbouring countries.

IV. Country visits

A. Japan

43. I paid a visit to Japan from 24 February to 4 March 2005 to examine the impact of the human rights situation in the Democratic People's Republic of Korea on Japan, in particular the reported abductions of Japanese nationals by the Democratic People's Republic of Korea. A number of Japanese nationals were abducted by agents of the Democratic People's Republic of Korea in past decades, particularly in the 1970s and 1980s. In 2002 at a summit — the first — between the leaders of Japan and the Democratic People's Republic of Korea, held in Pyongyang, the latter admitted that the Democratic People's Republic of Korea had been involved in a number of abductions and apologized accordingly. The two sides also adopted the "Japan-DPRK Pyongyang Declaration" as the basis for their bilateral relations. Paragraph 3 lays the groundwork as follows:

> "Both sides confirmed that they would comply with international law and would not commit conducts threatening the security of the other side. With respect to the outstanding issues of concern related to the lives and security of Japanese nationals, the DPRK side confirmed that it would take appropriate measures so that these regrettable incidents, [which] took place under the abnormal bilateral relationship, would never happen in the future."

44. This was followed by a second summit, which took place in 2004. At this meeting, the Democratic People's Republic of Korea promised to conduct a thorough reinvestigation of the cases in order to confirm the whereabouts of the abductees, whose safety remained unknown. Japan and the Democratic People's Republic of Korea continued the negotiations with working-level consultations.

45. Various uncertainties remain and they need to be dealt with satisfactorily on the basis of constructive dialogue and related follow-up. At the time of my visit, Japan claimed that 15 individuals had been abducted by the Democratic People's

Republic of Korea. On 21 April 2005, the Government of Japan claimed that an additional Japanese citizen, a male, had been abducted by the Democratic People's Republic of Korea. Five of these individuals have now returned to Japan. Of the remaining 10 individuals listed, the Democratic People's Republic of Korea claimed that only eight were taken into the Democratic People's Republic of Korea, while the other two never entered the country. The Democratic People's Republic of Korea also claims that the eight individuals mentioned had died, and that it had returned the remains of two of those individuals to Japan, in 2002 and 2004.

46. The authenticity of those remains has been contested by Japan. The alleged remains of a man abducted by the Democratic People's Republic of Korea were returned to Japan in 2002 and 2004 and were subjected to forensic tests. The remains returned in 2002 were found not to belong to the man in question, while those returned in 2004 were found to belong to four other persons. With regard to the remains of a woman abducted by the Democratic People's Republic of Korea (whom the Democratic People's Republic of Korea also claimed to have committed suicide in the Democratic People's Republic of Korea) and returned in 2004, various forensic tests were carried out in Japan in 2004. The tests revealed that the remains were not those of the abductee. Later, the Democratic People's Republic of Korea responded to the effect that the country would not resume talks with Japan in relation to the abductions, as it considered the issue to be settled. Subsequently, in February 2005, the Democratic People's Republic of Korea rebutted Japan's claim in regard to the results of the forensic tests and demanded that the remains be returned to the Democratic People's Republic of Korea.

47. The circumstances concerning the alleged deaths of the eight individuals mentioned, and concerning the two individuals of whom the Democratic People's Republic of Korea denies knowledge, remain ambivalent and equivocal. Several of these cases have also been brought to the attention of the Working Group on Enforced or Involuntary Disappearances, which is still considering them.

48. Many sources in Japan, particularly the families of the abductees, believe that a number of Japanese nationals abducted by the Democratic People's Republic of Korea are still alive in the Democratic People's Republic of Korea. The feeling is that they should be returned to Japan expeditiously. The issue of the remains that have been returned to Japan, and which have been found by Japan not to belong to the abductees in question, has had an enormous impact on the public, which demands clarification and that the Democratic People's Republic of Korea accept responsibility. Some quarters have advocated strong measures to elicit an effective response. Some sectors of the community feel that the number of people abducted by the Democratic People's Republic of Korea is significantly larger than the 15 cases mentioned above.

49. On another front, other sources advised that while the issue of abductions is of great importance to Japan, there is a need for a balanced approach to ensure that the other major issues of the day that also have an impact on human rights, especially the multi-party talks concerning denuclearization of the Democratic People's Republic of Korea, should not be compromised. There is evidently a relationship between human rights, peace and security in North-East Asia. Some also raised the issue of historical antecedents affecting the Korean peninsula and the related challenge of accountability on the part of all parties involved. On this front, I welcome the spirit of the summits between the two countries, particularly the 2002

summit where each party apologized to the other for various past practices, in addition to agreeing to follow-up measures.

50. It should be recalled that the abductions of persons ("enforced disappearances") is generally forbidden in both national law and international law. Human rights, including the right to life and security of the person, are transgressed when these practices take place. Key international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide the yardsticks for the protection of persons against abduction. Importantly, there is also a United Nations instrument specifically on the issue of abduction or enforced disappearance. In 1992 the Declaration on the Protection of all Persons from Enforced Disappearance was adopted by the General Assembly by its resolution 47/133. According to the Declaration, a number of measures are required to prevent abductions and to provide redress. They include effective legal and other measures on the part of each State to prevent and terminate abductions; the criminalization of acts of abduction; bringing the perpetrators to justice; prompt and effective judicial remedy as a means of determining the whereabouts of the person deprived of liberty; and release of the person deprived of liberty in a manner permitting reliable verification of her/his release. Abductions are considered a continuing offence as long as the perpetrators continue to conceal the whereabouts of the victims and these facts remain unclarified. The Declaration also pays particular attention to the plight of the victims and their families, and their call for justice.

Recommendations on the country visits to Japan

51. **I wish to express my deep concern over the issue and wish to convey five key messages as a humanitarian call:**

(a) **Responsibility: I call upon the Democratic People's Republic of Korea to respond effectively and expeditiously to Japan's claim that there are a number of Japanese nationals abducted by the Democratic People's Republic of Korea who are still alive in the Democratic People's Republic of Korea and that they should be returned to Japan immediately and in safety;**

(b) **Transparency: I call upon the Democratic People's Republic of Korea to ensure reliable and objective verification of its claim concerning the alleged deaths of various Japanese nationals abducted by the Democratic People's Republic of Korea, to clarify related ambiguities and discrepancies, and to ascertain whether other Japanese nationals have been abducted by the Democratic People's Republic of Korea;**

(c) **Family unity: I call upon the Democratic People's Republic of Korea to respect and guarantee family unity/reunification, particularly for those who have suffered from the abductions;**

(d) **Accountability: I call upon the Democratic People's Republic of Korea to rectify the discrepancies and enable the victims of abductions and their families to access justice and seek redress effectively and expeditiously from those responsible for the abductions, including bringing to justice those responsible for the acts;**

(e) **Sustainability: I call upon the Democratic People's Republic of Korea to resume and sustain dialogue and actions with Japan to solve**

peacefully the problem of abductions of Japanese nationals by the Democratic People's Republic of Korea, to ensure satisfactory resolution of the issue, and to prevent abductions from happening again.

52. **These messages should be seen in the light of the call for international solidarity to support the two countries in their bilateral dialogue/relations to solve the problem constructively, reflecting the need to promote and protect human rights comprehensively on the basis of international law and the international human rights framework.**

B. Mongolia

53. I visited Mongolia from 4 to 11 March 2005. The main purpose of this visit was to examine the consequences of the human rights situation in the Democratic People's Republic of Korea, in particular the displacement of people across borders and its relationship to the refugee phenomenon.

54. Since 1999 Mongolia has been witnessing an influx of persons from the Democratic People's Republic of Korea seeking refuge. On average, several hundred persons annually manage to cross the border into Mongolia on its eastern frontier, at times in groups and at times alone, seeking refuge. Recent flows suggest that more young women are seeking refuge, at times with children. The pattern suggests that several spend a period of time in China before entering Mongolian territory. The influx into Mongolia appears to be "organized" in that the persons seeking refuge have been assisted by various entities working clandestinely to secure the entry of these persons into Mongolia.

55. Once they gain access to Mongolian territory, they are interviewed by border personnel and other concerned authorities before being taken to the capital city for more in-depth interviews and medical assistance. The current position of the Mongolian authorities is to provide temporary shelter to these people and to treat them as humanitarian cases. This policy abides by the international principle of non-refoulement, which prohibits the sending back of refugees (or deporting them) to their country of origin where there is a threat of persecution. In reality, these persons are in transit, as they later depart for the Republic of Korea for long-term settlement. Official sources indicate that pending their exit, those seeking refuge in Mongolia are cared for in Ulaanbaatar, and there are no plans on the part of the Government of Mongolia to set up a refugee camp to house them.

56. The Mongolian authorities should be commended and supported for their humanitarian stance which bodes well for the country's commitment to democracy and human rights. The country also has various mechanisms, such as the National Human Rights Commission of Mongolia, which help to provide checks and balances to promote and protect human rights. It should not be forgotten that there are various economic pressures at home, since Mongolia is still a developing country with limited resources and widespread poverty. The humanitarian stance is also fraught with political difficulties, since some neighbouring countries currently differ from Mongolia in their approach on how to treat those who seek refuge from the Democratic People's Republic of Korea.

57. Since 2001 UNHCR has been present in Mongolia and helps to build the capacity to respond to the situation of those seeking refuge. Some sources whom I

met felt that there was more room for the national authorities to cooperate with UNHCR, especially to share information and ensure transparency concerning influxes. Currently there is also a move by Mongolia to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and this is welcome. There is also OHCHR representation in the country.

58. The above scenario should be placed in context. The strategic position of Mongolia — between two great Powers — and geographically near the Democratic People's Republic of Korea and the Republic of Korea highlights the care with which the country must chart its course in international relations in general, and on the issue of asylum and refugees in particular. The country maintains good relations with the neighbouring Powers and with both the Democratic People's Republic of Korea and the Republic of Korea. The friendly historical ties with the Korean peninsula are witnessed by the fact that in the 1950s at the time of the Korean war, Mongolia provided shelter to orphans from that region. Although the Democratic People's Republic of Korea closed its embassy in Mongolia some time ago, the Democratic People's Republic of Korea has now re-established it and it is doubtless aware of the presence of those seeking asylum in the country.

59. The careful policy adopted by Mongolia is to maintain friendly relations with all parties while adopting a humanitarian approach towards those who seek refuge. The fear of a mass influx of non-nationals into Mongolia, and its possible destabilizing effect, inevitably influences policy-making and security concerns. This is pertinent not only to those seeking refuge from the Democratic People's Republic of Korea but also from other countries.

60. I met and talked to a number of people who had sought asylum in Mongolia and their accounts provided key indications concerning refugee status. Most of the group were women in their twenties and thirties. They told me about harrowing and distressing experiences in the Democratic People's Republic of Korea ranging from persecution and discrimination to enforced disappearances of family members, collective punishment of families by the State authorities, hunger and economic deprivation, the privileged position of those in power, the State's intolerance of those who disagree with those in power, forced labour, "re-education", and inhuman prison conditions for those imprisoned for trying to leave the country without permission from the authorities. Some had tried to escape from the country twice, but upon arrival in a neighbouring country were deported back to the Democratic People's Republic of Korea, where they were imprisoned and labelled "criminals" or "traitors". Subsequently they escaped again and ultimately arrived in Mongolia overland, crossing the territory between the Democratic People's Republic of Korea and Mongolia.

61. All those whom I met had come to Mongolia through a neighbouring country with the help of some organizations, and they had either paid a large sum of money (about 3 million won, nearly US$ 3,000) or were "under contract" to pay the sum upon arrival in the resettlement country. Some of those whom I met felt that this was the sole way of gaining access to the border to seek refuge in Mongolia. The journeys are not only dangerous but also replete with difficulties, such as the need to pay officials to allow passage before reaching Mongolia. One of the women I interviewed provided evidence indicating that before she managed to seek refuge in Mongolia, she had been trafficked for dubious purposes in a neighbouring country, after which she was able to get help to reach the Mongolian border. They were all

very grateful to the Mongolian authorities for providing refuge and hoped to resettle in the Republic of Korea. I also received reports that some religious organizations were helping those seeking refuge gain access to the destination country.

62. One of the perennial challenges internationally and nationally, is ascertaining and identifying refugee status; such status provides international protection in the absence of national protection. Under international law, a refugee is generally a person who leaves her/his country of origin owing to a "well-founded fear of persecution". This is conditioned by both subjective elements, e.g. a person's feelings and experiences, and objective elements, e.g. the situation in the country of origin. A key right pertaining to such status is non-refoulement.

63. Currently, Mongolia regards those who seek refuge from the Democratic People's Republic of Korea as humanitarian cases, without specifically calling them "refugees". The country does not yet have a law specifically to determine refugee status, although various national laws contain provisions that give the authorities discretion to grant asylum. The current policy of granting temporary refuge to these people already indicates a degree of flexibility in applying the immigration-related provisions: while in national law, these people may be seen as illegal border-crossers, in effect, they are not treated as such. They are not punished for crossing the border without visas, but are housed temporarily in Mongolia on humanitarian grounds, pending resettlement in another country.

64. Preliminary analysis of the situation suggests that currently, those seeking asylum from the Democratic People's Republic of Korea who enter Mongolia fall primarily into two groups: they are refugees, or "refugees *sur place*". The most certain way of knowing into which category those seeking refuge fall is to have a screening procedure (e.g. a panel) to determine their status, preferably with the presence of the primary United Nations agency dealing with the issue, UNHCR. Currently, while informal interviews are carried out by the Mongolian authorities in regard to those seeking refuge, a formal mechanism of the nature just noted does not yet exist and needs to be developed. With such a mechanism, there will be greater clarity, certainty and objectivity in the determination of the status of those seeking refuge in the country. In practice, the authorities tend to classify those who seek asylum from the Democratic People's Republic of Korea as humanitarian cases without delving into formal investigations into whether they are refugees or not. This approach provides a kind of euphemism, aimed partly at keeping the situation low-key and partly at avoiding a negative reaction from other countries that may not be agreeable to a humanitarian policy.

65. One issue affecting those seeking refuge that has arisen in recent years is the problem of human trafficking and smuggling. Basically, human trafficking is the transfer of a person by another person for the purpose of exploitation, e.g. sexual exploitation, forced marriage, or other forms of slavery; this may be within a country or across borders. Smuggling, however, is where an intermediary helps a person to cross the border illegally into another country. The international position is now clarified by the Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organised Crime of 2000. Mongolia is considering accession to these treaties. In international law, victims of trafficking or smuggling should be treated as victims and should not be punished. However, human trafficking and

smuggling should be criminalized and action should be taken to punish the traffickers and smugglers. This should be seen in the light of the fact that in several cases, refugees are in such desperate situations that the only way that they can find refuge in another country is through the use of traffickers or smugglers, at times with fake travel documents. Moreover, in reality, a distinction should be made between criminals who profit from trafficking and smuggling refugees, on the one hand, and non-governmental organizations or civil society members who assist refugees to find a safe haven. The call for criminalization should be vis-à-vis the former rather than the latter.

66. Nor is their refugee status to be affected if the persons concerned are also victims of trafficking or smuggling. This is clarified by the "saving clauses" found in both Protocols mentioned above, to the effect that the status of trafficked persons or smuggled persons is not to compromise their status as refugees where the criteria are satisfied under international law, including under the Convention relating to the Status of Refugees. A person does not lose her/his refugee status merely because s/he is also trafficked or smuggled.

Recommendation on the country visit to Mongolia

67. **For the future, key directions for Mongolia include the following:**

(a) **Sustain its humanitarian policy and practice in sheltering those who seek refuge in the country;**

(b) **Protect and assist refugees, bearing in mind various vulnerable groups such as women and children and the need to cooperate closely with UNHCR;**

(c) **Continue to abide by international human rights law and international law concerning refugees, ensure effective implementation measures, and build capacity among law enforcement officials, including by means of training in human rights and refugee law (particularly the principle of non-refoulement) for border officials, and raise awareness among the public to nurture sympathy and understanding for those who seek refuge;**

(d) **In the case where persons are trafficked or smuggled, treat them as victims, ensure that they are not penalized and use victim-sensitive procedures;**

(e) **Accede to the Convention relating to the Status of Refugees and its Protocol, and adjust the country's laws, policies and mechanisms accordingly, with key support from and in cooperation with UNHCR and other United Nations agencies;**

(f) **Utilize independent mechanisms such as the National Human Rights Commission of Mongolia to help monitor the situation and support non-governmental organizations and civil society to help those who seek asylum in the country, in addition to building a network among key actors and computerizing the data on refugees and other non-nationals.**

V. Recommendations

68. **In retrospect, while there have been some constructive developments in the Democratic People's Republic of Korea in recent decades, there are a variety of discrepancies and transgressions — several of an egregious nature — in the implementation of human rights in the country, calling for immediate action to prevent abuses and to provide redress. To promote and protect human rights in the Democratic People's Republic of Korea, the Special Rapporteur reiterates the recommendations contained in his report to the Commission. The recommendations are imperative, but non-exhaustive:**

(a) **The Democratic People's Republic of Korea should:**

(i) **Abide by international human rights standards, including the four human rights treaties to which it is a party, follow up the recommendations of the monitoring committees set up by these treaties, and accede to and implement other relevant treaties;**

(ii) **Reform laws and practices that are inconsistent with those standards;**

(iii) **Uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation at all levels of decision-making and implementation;**

(iv) **Respect the rule of law, particularly the promotion of an independent and transparent judiciary, safeguards for the accused/detainees, access to justice and civil society participation, and checks and balances against abuse of power, e.g. through the establishment of a national human rights commission or equivalent, genuine non-governmental organizations, and active and independent media;**

(v) **Reform the administration of justice, in particular to improve the prison system, abolish capital and corporal punishment and forced labour, and end preventive or administrative detention as well as the detention of political prisoners;**

(vi) **Address the root causes of displacement, prevent persecution and victimization of those who are displaced, including when they return to their country of origin, treat those who are displaced, smuggled and/or trafficked humanely, foster social reintegration of returnees, and guarantee the right to freedom of movement without imposing sanctions on those who move without permission;**

(vii) **Provide redress for transgressions, such as those in relation to the abductions of foreign nationals, through expeditious and effective processes;**

(viii) **Build the capacity of law enforcement bodies and the public to protect human rights through proactive programmes of human rights education that are gender and child-sensitive and promote a critical analysis;**

(ix) **Issue a clear directive, perhaps in the form of a national human rights action plan prepared with broad public participation, to law enforcement bodies and other authorities to respect human rights;**

(x) **Ensure that humanitarian assistance, including food aid, reaches the target groups, with unimpeded access and transparent monitoring and accountability;**

(xi) **Invite the Special Rapporteur and other mechanisms, as appropriate, to visit the Democratic People's Republic of Korea to take stock of the human rights situation and recommend reforms;**

(xii) **Seek technical assistance from the Office of the United Nations High Commissioner for Human Rights and other agencies, as appropriate, to support activities to promote and protect human rights.**

(b) **Other members of the international community should:**

(i) **Influence the Democratic People's Republic of Korea constructively to follow the recommendations noted above;**

(ii) **Uphold the protection of refugees and other persons displaced from the Democratic People's Republic of Korea, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements that jeopardize the lives of those who seek asylum;**

(iii) **Promote orderly and safe channels of migration with the country of origin to reduce clandestine channels and promote intercountry cooperation to counter human smuggling and trafficking, while treating the victims humanely;**

(iv) **Provide space for long-term solutions to help refugees, including local settlement in the first-asylum country, resettlement in third countries, and safe and voluntary repatriation with adequate follow-up, and strengthen international solidarity in sharing the responsibility to care for refugees and migrants;**

(v) **Ensure that aid and assistance reach vulnerable groups with transparent monitoring and accountability, supported by unimpeded access by humanitarian organizations.**

Notes

[1] United Nations Office for the Coordination of Humanitarian Affairs: OCHA Office in the Democratic People's Republic of Korea, DPR Korea Situation Report for April-May 2005, No. 03/05, p. 1.

[2] Ibid.

[3] For example: Human Rights Watch, "The Invisible Exodus: North Koreans in the People's Republic of China", Human Rights Watch, vol. 14, No. 8 (c) (November 2002), pp. 1-36; Amnesty International, "Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)", ASA/24/003/2004 (January 2004); D. Hawk, The Hidden Gulag: Exposing North Korea's Prison Camps (Washington, D.C.: US Committee for Human Rights in North Korea, 2003); Korean Institute for National Unification, White Paper on

Human Rights in North Korea 2004 (Seoul: Korean Institute for National Unification, 2004); Good Friends, Human Rights in North Korea and the Food Crisis (Seoul: Good Friends, 2004). The question of humane treatment is closely linked with the refugee issue: see further: The Commission to Help North Korean Refugees, The Reality of Forced Repatriation of North Korean Refugees (Seoul: The Commission to Help North Korean Refugees, 2000); Citizens' Alliance for North Korean Human Rights and Helsinki Foundation for Human Rights, The Fifth International Conference on North Korean Human Rights and Refugees (Seoul: Citizens' Alliance for North Korean Human Rights, 2004). With regard to the various non-governmental sources listed, it should be noted that a number of non-governmental organizations working on the issue of human rights, and the Democratic People's Republic of Korea diverge on the strategies to address the problem. The link with the issue of religion can be seen from the United States Commission on International Religious Freedom, Annual Report (Washington D.C.: United States Commission on International Religious Freedom, 2004). For a more policy-oriented and political approach, see: International Crisis Group (ICG), North Korea: Where Next for the Nuclear Talks?, Asia Report No. 87 (Brussels: ICG, 2004) and ICG, North Korea: Can the Iron Fist Accept the Invisible Hand? (Brussels: ICG, 2005).

[4] Ibid.

[5] White Paper on Human Rights in North Korea 2005 (Seoul: Korean Institute for National Unification, 2004), p. 38.

[6] For recent information, see the material relating to the Sixth International Conference on North Korean Human Rights and Refugees, Seoul, 14-16 February 2005 on the website of the Citizens' Alliance for North Korean Human Rights (www.nkhumanrights.or.kr/nkhr_new/main.htm); J. R. Charney, *Acts of Betrayal: The Challenge of Protecting North Koreans in China* (Washington, D.C. Refugees International, 2005).

[7] UNICEF Humanitarian Action DPR Korea Donor Update, 12 May 2005, p. 1 and DPRK 2004. Nutrition Assessment: Report of Survey Results (Pyongyang: Central Bureau of Statistics and Institute of Child Nutrition, 2005). See further: UNICEF, Analysis of the Situation of Children and Women in the Democratic People's Republic of Korea (Pyongyang: UNICEF DPRK, 2003).

[8] N. K. Muico, An Absence of Choice: The Sexual Exploitation of North Korean Women in China (London: Anti-Slavery Society, 2005) and op. cit. note 6.

[9] UNICEF, op. cit. at note 9.